In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-82

JOSE M. ALONSO GARCIA, ET AL.,
PETITIONERS,

v.

ADALBERT FRIESECKE AND BRITISH MARINE MUTUAL INSURANCE ASSOCIATION ET AL.,
RESPONDENTS,

v.

SEA LAND SERVICE, INC., ET AL.,
RESPONDENTS.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENTS.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Statutes Involved

1. Constitution, art. IV, § 3, cl. 2—

"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; . . ."

2. Second Organic Act of 1917, § 7 (Puerto Rico Federal Relations Act, 48 U.S.C. § 747)—

Public property transferred

All property which may have been acquired in Puerto Rico by the United States under the cession of Spain in the treaty of peace entered into on the 10th day of December, 1898, in any public bridges, road houses, water powers, highways, unnavigable streams and the beds thereof, subterranean waters, mines or minerals under the surface of private lands, all property which at the time of cession belonged, under the laws of Spain then in force, to the various harbor works boards of Puerto Rico, all the harbor shores, docks, slips, reclaimed lands, and all public lands and buildings not reserved by the United States for public purposes prior to March 2, 1917, is placed under the control of the government of Puerto Rico, to be administered for the benefit of the people of Puerto Rico; and the Legislature of Puerto Rico shall have authority, subject to the limitations imposed upon all its acts, to legislate with respect to all such matters as it may deem advisable. Mar. 2, 1917, c. 145, § 7, 39 Stat. 954; May 17, 1932, c. 190, 47 Stat. 158.

3. Second Organic Act of 1917, § 8 (Puerto Rico Federal Relations Act, 48 U.S.C. § 749)—

"Harbors and navigable waters transferred

The harbor areas and navigable streams and bodies or water and submerged lands underlying the same in and around the island of Puerto Rico and the adjacent islands and waters, owned by the United States on March 2, 1917, and not reserved by the United States for public purposes, are placed under the con-

trol of the government of Puerto Rico, to be administered in the same manner and subject to the same limitations as the property enumerated in sections 747 and 748 of this title. All laws of the United States for the protection and improvement of the navigable waters of the United States and the preservation of the interests of navigation and commerce, except so far as the same may be locally inapplicable, shall apply to said island and waters and to its adjacent islands and waters. Nothing contained in this chapter shall be construed so as to affect or impair in any manner the terms or conditions of any authorizations, permits, or other powers lawfully granted or exercised in or in respect of said waters and submerged lands in and surrounding said island and its adjacent islands by the Secretary of the Army or other authorized officer or agent of the United States prior to March 2, 1917. Mar. 2, 1917, c. 145, § 8, 39 Stat. 954; May 17, 1932, c. 190, 47 Stat. 158; July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501."

4. Second Organic Act of 1917, § 37 (Puerto Rico Federal Relations Act, 48 U.S.C. § 821)—

"Legislative power

The legislative authority shall extend to all matters of a legislative character not locally inapplicable, including power to create, consolidate, and reorganize the municipalities so far as may be necessary, to provide and repeal laws and ordinances therefor; also the power to alter, amend, modify, or repeal any or all laws and ordinances of every character in force in Puerto Rico or municipality or district thereof on March 2, 1917, insofar as such alteration, amendment, modification, or repeal may be consistent with the

provisions of this chapter. Mar. 2, 1917, c. 145, § 37, 39 Stat. 964; May 17, 1932, c. 190, 47 Stat. 158."

Reasons for Denying the Writ

I. THERE HAS NEVER BEEN ANY REQUIREMENT OF FULL CONSTITUTIONAL UNIFORMITY IN PUERTO RICO. WITH NO COMMON DENOMINATOR THERE CAN BE NO CONFLICT BETWEEN THE DECISIONS INTERPRETING THE LONGSHOREMEN'S ACT AND THOSE INTERPRETING THE PUERTO RICO COMPENSATION ACT.

Almost from the very outset there has been a lack of application to Puerto Rico of the Constitutional provisions otherwise uniform in the United States. Thus in *Downes* v. *Bidwell,* 182 U.S. 244, 277, 287, this Court held in 1901 that article 1, section 8 of the Constitution requiring duties to be uniform "throughout the United States" did not pertain to Puerto Rico.

In *Dorr* v. *United States,* 195 U.S. 138, 149 (1904) it was held ". . . that the Constitution does not without legislation, and of its own force, carry such right (trial by jury) to territory (Philippine Islands) * * *", (emphasis added) not made a part of or incorporated into the United States.

Twenty years after *Downes* v. *Bidwell, supra,* this Court said in *Balzac* v. *People of Puerto Rico,* 258 U.S. 298, 304 (1922) that it was "clearly settled" that Constitutional requirements appearing in article 3 of the Constitution and in the 6th and 7th Amendments as to jury trials, did not apply to territory not incorporated into the Union and that Puerto Rico was not so incorporated (p. 305). This Court also went on to answer, forty-five years ago, petitioner's current argument that because citizens of Puerto Rico are citizens of the United States, their rights must

be in every respect identical (pp. 307-309). The above has been affirmed once again by this Court in the recent decision of *Torres* v. *Commonwealth of Puerto Rico*, — U.S. —, 99 S.Ct. 2425 (1979).

Given this background, the decision of the United States Court of Appeals for the First Circuit in *Lastra, et al.* v. *New York and Porto Rico S.S. Co.*, 2 F.2d 812 (1924) follows in logical sequence. Noting (p. 813) that the Constitution does not apply to Puerto Rico *ex proprio vigore*,[1] the Court found that the admiralty provision of the Constitution (art. 3, § 2) did not therefore extend to Puerto Rico unless Congress had put it there by legislation (pp. 813-814).

The subsequent decision in 1956 of *Guerrido* v. *Alcoa Steamship Company Inc.*, 234 F.2d 349 (1st Cir.), adhered to this view, stating (p. 352):

> "Since Puerto Rico is neither a state of the union nor a territory which has been incorporated into the union preliminary to statehood, it is true that all the provisions of the federal Constitution are not necessarily in force within its borders."

In 1960 in *Fonseca* v. *Prann*, 282 F.2d 153, the Court of Appeals for the First Circuit faced squarely up to whether or not uniformity of the maritime law was required in Puerto Rico. Reviewing *Lastra* and *Guerrido*, the Court found (p. 156) that it was not aware of any Constitutional principle which prevented Congress from giving Puerto

[1] In approving a Constitution for Puerto Rico, Congress in House Report 2275 of June 19, 1950 (1950 U.S. Code Congressional Service, 81st Congress, Second Session, p. 2681) distinguished between the then incorporated territories of Alaska and Hawaii, observing that the Constitution and laws of the United States were extended to them (p. 2683) but (p. 2684) "The Constitution has never been extended to Puerto Rico".

Rico jurisdiction over its own waters, fully cognizant (p. 157) that its holding "creates an area of lack of uniformity in the maritime law." and going on to observe that "absolute uniformity in things maritime is not a constitutional requirement nor is it even essential to the proper harmony of the maritime law in its interstate and international relations."[2]

With the issue of uniformity specifically posed by the Court below, a petition for writ of certiorari was filed in *Fonseca*, urging the same arguments as to uniformity, Fourteenth Amendment and conflicts with this Court's decisions, (See Petition, No. 709 October Term 1960) and this Court declined to intervene, 365 U.S. 860 (1960), on this same issue three years before *Reed* v. *S/S Yaka*, 373 U.S. 410 (1963).

Involving similar issues insofar as the admiralty and maritime jurisdiction is concerned, this Court had the opportunity to review similar arguments to the ones presented in the Petition for Certiorari now under consideration. See *Alcoa Steamship Company* v. *Perez Rodriguez*, 376 F.2d 35 (1st Cir. 1967), *cert. denied*, 389 U.S. 905 (1967).

The decision entered by the Court of Appeals for the First Circuit follows eight decisions of said Court. *Lastra* v. *New York & Puerto Rico Steamship Company*, 2 F.2d 812 (1st Cir. 1924), *appeal dismissed*, 269 U.S. 536 (1925);

[2] Some other areas of lack of uniformity in the maritime law are:
(1) application of various State death acts to maritime torts. *MV/Tungus et al.* v. *Skovgaard*, 358 U.S. 588 (1959);
(2) the possession of a cause of action for wrongful death for unseaworthiness under state statutes by estates of longshoremen and harbor workers, but not by those of seamen, *Gillespie* v. *U. S. Steel*, 379 U.S. 148 (1964);
(3) reference to various state statutes of limitation by analogy, *McAllister* v. *Magnolia Petroleum Co.*, 357 U.S. 221 (1958);
(4) the regulation of marine insurance by the States, *Wilburn Boat Co.* v. *Firemen's Fund Ins. Co.*, 348 U.S. 310 (1955).

Guerrido v. *Alcoa Steamship Company,* 234 F.2d 349 (1st Cir. 1956); *Fonseca* v. *Prann,* 282 F.2d 153 (1st Cir. 1960), *cert. den.* 365 U.S. 860 (1961); *Waterman Steamship Corporation* v. *Rodriguez,* 290 F.2d 175 (1st Cir. 1961); *Alcoa Steamship Company* v. *Perez Rodriguez,* 376 F.2d 35 (1st Cir. 1967) *cert. den.* 389 U.S. 905 (1967); *Alcoa* v. *Velez,* 376 F.2d 521 (1st Cir. 1967); *Salas Mojica* v. *Puerto Rico Lighterage,* 492 F.2d 904 (1st Cir. 1974); *Caceres* v. *San Juan Barge,* 520 F.2d 305 (1st Cir. 1975), one decision of the Eastern District of Pennsylvania, *Fan Fan* v. *Berwind Corporation,* 362 F.Supp. 793 (E.D.Pa. 1973), and one decision of the Second Circuit, *William* v. *McAllister Brothers,* 534 F.2d 19 (2nd Cir. 1976). Through more than fifty years the consensus of these decisions has been that under Sections 7, 8, and 37 of the second Puerto Rico Organic Act of 1917, called the Jones Act, 39 Stat. 951, 954, 964, Congress gave Puerto Rico general legislative power over its own waters and in accordance therewith, the local legislature was and is entitled to enact its own workmen's compensation act for maritime employees to the exclusion of the maritime law of the United States. As recently as 1978, this Court, in the case of *Construction Aggregates Corp.* v. *Rivera de Vicenty,* 573 F.2d 86 (1978), recognized that Puerto Rico had authority to apply its Workmen's Compensation Law to various categories of marine workers, a question which had already been put at rest in many previous decisions in the Court of Appeals for the First Circuit. That same year, said Court, in *Rios* v. *Empresas Lineas Maritimas Argentinas,* 575 F.2d 986 (1978), stated at page 989, footnote 3, in its pertinent part, that the Longshoremen and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.,* had been held in the past not to apply to Puerto Rico because of the Puerto Rico Workmen's Accident Compensation Act, 11 L.P.R.A. 1, *et seq.*

The foundation of the delegation of legislative powers doctrine was the *Guerrido* case, *supra,* where the Court of Appeals brought at least that much of the *Lastra* up to date, saying in general (p. 354):

> "Our conclusion was that these three sections gave the Puerto Rican Legislature general legislative power concerning Puerto Rican waters. To that conclusion we adhere. Certainly by these provisions, Congress evidenced an intent to confer such power upon the insular Legislature to the extent of its constitutional authority to do so."

Harmonizing the delegation of legislative powers of Sections 7, 8, and 37 of the Jones Act with the General Maritime Law of the United States, in force in Puerto Rican waters, the Court of Appeals stated (p. 354):

> "We conclude, therefore, that the rules of the admiralty and maritime law of the United States are presently in force in the navigable waters of the United States in and around the island of Puerto Rico to the extent that they are not locally inapplicable either because they were not designed to apply to Puerto Rican waters or because they have been rendered inapplicable to these waters by inconsistent Puerto Rican legislation. This is not to say, of course, that Puerto Rican legislation could thus supplant a rule of maritime law which Congress in the exercise of its constitutional power has expressly made applicable to Puerto Rican waters."

Said Court specifically held (p. 355):

> "In the *Lastra* case, this court held that the Workmen's Accident Compensation Act of Puerto Rico

which was then in force applied to maritime workers. We adhere to that view. For we still think, as we indicated in the *Lastra* case, that Congress intended by section 8 of the Jones Act to give the Legislature of Puerto Rico full power to provide compensation for marine workers injured in Puerto Rican waters to the exclusion of the remedies against their employers provided by the American Maritime Law."

Later, in the *Fonseca* case, *supra*, the Court said again (p. 157):

"Instead in *Lastra* and *Guerrido* this court held and *we agree* that Congress in the valid exercise of powers conferred upon it by the Constitution gave the legislature of Puerto Rico power to enact legislation inconsistent with the Jones Act and the general maritime law, and that the Legislature of Puerto Rico had exercised its power in its Workmen's Accident Compensation Act." (Emphasis supplied)

Of course, in order for the compensation act to be held inconsistent with remedies under the Jones Act and maritime law of the United States, the Court of Appeals necessarily had to accept the exclusiveness of the compensation act, which it effectively did in *Fonseca, Alcoa* and *Salas Mojica.*

This thesis was expressly followed in *Waterman Steamship Corporation* v. *Rodriguez,* 190 F.2d 175, 179 (1st Cir. 1961) where the *Guerrido* language was quoted to the effect that the general maritime law of the United States is "locally inapplicable" in Puerto Rico when rendered so by "inconsistent Puerto Rican legislation", viz., the Puerto Rico Workmen's Accident Compensation Act, and by also saying in *Waterman,* p. 180, on the very issue of exclusiveness:

"Nor it is questioned that a longshoreman who is injured in Puerto Rican waters by reason of the unseaworthiness of a vessel owned by one *who is not his employer*, may enforce his rights in a civil action as well as in a suit in admiralty." (Emphasis supplied)

Being consistent, said Court states in the *Alcoa* case, *supra,* at page 38:

"We adhere to the views expressed in our prior opinions to the effect that the Puerto Rico Workmen's Accident Compensation Act has, within the area of its applicability, displaced the remedies of the maritime law including the Federal Longshoremen's Act and provides for the sole remedy of a Puerto Rico longshoremen against his employer for injuries sustained in the course of his employment. We have been referred to no Puerto Rico statute or congressional enactment which has modified our holding in the *Guerrido* case that the local workmen's compensation act supplanted the law of unseaworthiness in respect to locally employed maritime workers. Moreover, particularly in view of the unique status of Puerto Rico, we think that if and when Congress deems it advisable to extend law to Puerto Rico which would otherwise have been inapplicable to that Commonwealth, it will do so in clear and explicit terms."

Finally, the Court of Appeals for the First Circuit, in *Caceres* v. *San Juan Barge Company,* 520 F.2d 305 (1975), ratified the doctrine, citing five previous decisions and stating:

"This court has discussed the relationship between federal maritime law, including the Jones Act, and

the Puerto Rico Workmen's Accident Compensation Act on prior occasions. . . . In each of these five cases the accident had occurred inside the territorial waters of Puerto Rico, and in each case the court, relying on the Second Puerto Rico Organic Act, held or stated *in dicta* that "the Workmen's Accident Compensation Act, and not federal maritime law is the exclusive remedy in suits against an insured employer for injuries sustained in the course of employment."

There is nothing new in the petition herein on the issue of uniformity.

II. In the Absence of a Constitutional Mandate for Uniformity in Puerto Rico, Congress, Acting Under Its Constitutional Power To Legislate for National Territories, Could Have Extended the Admiralty Provision of the Constitution to Puerto Rico, but Has Instead Enabled Puerto Rico To Enact Its Own Legislation for Local Maritime Workers.[3] Under the Circumstances, Petitioners Fail To Inform This Court How or Why It Should Intervene.

There is no question that under its power to legislate for territories (art. IV, § 3, cl. 2 of the Constitution), Congress could have made the statutory and general maritime law of the United States fully applicable to Puerto Rico. This power has been recognized in all the leading Court of Appeals decisions on the subject. As *Lastra* points out (p. 813) "We find no such legislation but the reverse".

[3] Nor does the FELA cover railroad workers in Puerto Rico. Despite its otherwise uniform application as described by this Court in *Second Employer's Liability Cases*, 223 U.S. 1, 55 (1912), *New York Central R.R. Co.* v. *Winfield*, 244 U.S. 147 (1917), it has long been established that railroad employees in Puerto Rico are covered by the local compensation act and not by the FELA. *Camunas* v. *Porto Rico Ry. Light & Power Co.*, 272 F. 924 (1st Cir. 1921), *appeal dismissed* 260 U.S. 700.

See also *Guerrido* v. *Alcoa Steamship Company*, 234 F.2d 349 (1st Cir. 1956); *Fonseca* v. *Prann*, 282 F.2d 153 (1st Cir. 1960), *cert. den.* 365 U.S. 860 (1961); *Waterman Steamship Corporation* v. *Rodriguez*, 290 F.2d 175 (1st Cir. 1961); *Alcoa Steamship Company* v. *Perez Rodriguez*, 376 F.2d 35 (1st Cir. 1967) *cert. den.* 389 U.S. 905 (1967); *Alcoa* v. *Velez*, 376 F.2d 521 (1st Cir. 1967); *Salas Mojica* v. *Puerto Rico Lighterage*, 492 F.2d 904 (1st Cir. 1974); *Caceres* v. *San Juan Barge*, 520 F.2d 305 (1st Cir. 1975); *Fan Fan* v. *Berwind Corporation*, 362 F.Supp. 793 (E.D. Pa. 1973); *William* v. *McAllister Brothers*, 534 F.2d 19 (2nd Cir. 1976).

This Court has also acknowledged the broad powers given by Congress to Puerto Rico, commenting in *People of Puerto Rico* v. *Shell Company, Ltd.*, 302 U.S. 253, 261-262 (1937) that the aim of the Foraker Act, (April 12, 1900, Chapter 191, 31 Stat. 77) and the Organic Act (March 2, 1917, Chapter 145, 39 Stat. at L. 951) was to give "full power of local self-determination" to Puerto Rico. Referring also (p. 263) to "the sweeping character of the congressional grant of power contained in the Foraker Act and the Organic Act of 1917", this Court noted the "general purpose of Congress to confer power upon the government of Puerto Rico to legislate in respect of all local matters is made manifest".

Succeeding enactments have effectively demonstrated how the autonomy of Puerto Rico has been expanded by Congress, in what this Court has termed "the unique historic relationship between the Congress and the Commonwealth of Puerto Rico, . . .". *Katzenbach* v. *Morgan*, 384 U.S. 641, 658 (1966).

The progression can be visualized when it is noted that under the Foraker Act of 1900, 31 Stat. 77, Puerto Ricans were able to elect popularly only the lower house of the territorial legislature and the Resident Commissioner.

Under the Organic Act of 1917, 39 Stat. 951, the upper house was brought under the elective procedure and the appointed Governor able to select four of six cabinet members. In 1947, 61 Stat. 770, the Governor of Puerto Rico was permitted to be elected popularly rather than appointed by the President of the United States, and able to appoint all his cabinet members. In 1950, Puerto Ricans were permitted to write their own constitution (48 U.S.C. 731b), which they did after a referendum approving a Constitution, a Constitutional Convention, a referendum approving the Constitution as framed, Congressional and Presidential approval and a proclamation by the Governor of Puerto Rico on July 25, 1952. This Constitution afforded Puerto Rico the largest measure of independence yet accorded it by Congress. See House Report 1832, April 30, 1952 (1952 U.S. Code Cong. Service, 82nd Congress, Second Session pp. 1892-1902), continuing also the message of President Truman.

Illustrative of the official attitude of the United States toward Puerto Rico, was a communication by the State Department to the United Nations, characterizing the new status of Puerto Rico as no longer that of "non-self-governing nation", Bulletin of the Department of State, Vol. 28, No. 721, April 20, 1953, p. 584, *et seq.*

The various House Reports reflect this trend.

House Report No. 455, May 26, 1947 (1947 U.S. Code, Cong. Service, 80th Congress, First Session, pp. 1587-1589) seeking to amend the Organic Act to provide for a popular election of the Governor of Puerto Rico, pointed out that the existing Organic Act of 1917 gave the Puerto Rican legislature authority extending "to all matters of a legislative character not locally inapplicable". The Congressional Report went on to state that the people of Puerto Rico had demonstrated a "high degree of political consciousness by the extensive use of the franchise", and that

82.2% of electorate went to the polls in 1944. The report also noted the policy of the United States to encourage the "self-governing ability" of the people of Puerto Rico since 1900.

In 1950, House Report 2275, repeating in substance Senate Report S 3336 (1950 U.S. Code Cong. Service, 81st Congress, Second Session, p. 2681) approved the adoption of their own constitution by the people of Puerto Rico, noting (p. 2682) that this would

> "further implement the self-government principle established by the Congress as the cornerstone and fundamental policy governing the relationship of the United States toward territories over which it has jurisdiction."

The Report commented further (p. 2682) that the people of Puerto Rico were overwhelmingly in favor of having their own constitution, and further that this legislation "constitutes a reflection of the very strong sentiment which exists in Puerto Rico for a greater measure of local autonomy which this bill represents".

House Report No. 1832, April 30, 1952 (1952 U.S. Code Cong. Service, 82nd Congress, Second Session (p. 1892) commented favorably on the Constitution for Puerto Rico. This was said to constitute (p. 1892) * * * the latest of a series of enactments through which the Federal Government has provided ever increasing self-government in Puerto Rico". The Constitution, it was said (p. 1899) "represents the will of the people of Puerto Rico. Upon its approval the people of Puerto Rico assume full authority and responsibility of local self-government".

President Truman in his message of April 22, 1952, recommending Congressional approval of the Constitution, stated (p. 1902):

"With its approval, full authority and responsibility for local self-government, will be vested in the people of Puerto Rico. The Commonwealth of Puerto Rico will be a government which is truly by the consent of the governed."

On the very issue of the Puerto Rico Compensation Act, the decisions of the Court of Appeals for the First Circuit (as previously mentioned) specifically acknowledge the powers of Congress with *Fonseca*, saying (282 F.2d 153, 157):

"Of course, if Congress sees fit it may supplant the local legislation as it applies to local navigable waters by making the Jones Act and the general maritime law of unseaworthiness specifically applicable in Puerto Rican waters, but it is not our function to do so."

In view of all the foregoing, the failure of Congress to act in this area may be deemed to be advised rather than inadvertent. Indeed, House Report No. 455, May 26, 1947, (1947 U.S. Code Cong. Service, 80th Congress, First Session, p. 1587) pointedly observes that for the thirty years since the Organic Act of 1917 "Congress has never found it necessary to exercise its prerogative of annulling any law enacted by the Puerto Rican legislature".

It must be presumed therefore that when Congress enacted the Organic Act of 1917, and particularly Sections 7, 8, and 37 thereof (continued as 48 U.S.C. 747, 749, 821 in the Puerto Rico Federal Relations Act), Congress gave the Puerto Rican legislature, as was said in *Guerrido*, 234 F.2d 349 "general legislative power concerning Puerto Rican waters". (p. 354). This interpretation has now survived for the ensuing fifty years in a climate of ever widening autonomy for Puerto Rico.

There being no constitutional requirement for uniformity (No. I) and with Congress having refrained from intervention (No. II), petitioners afford this Court no reason why or how it should do so.

III. There Being No Constitutional or Congressional Mandate for Uniformity, the Only Remaining Consideration Is as to the Construction of the Local Compensation Act of Puerto Rico, an Area Wherein This Court Traditionally Defers to the Local Courts.

There being no issue requiring constitutional or congressional interpretation, the only remaining question is as to construction of the exclusiveness of remedy provision in the local act, a task reserved for the local courts. While this Court has freely construed the Longshoremen and Harbor Workers Compensation Act,[4] it has traditionally deferred to the decisions of the Supreme Court of Puerto Rico in interpreting local Puerto Rico legislation.[5]

Thus, in discussing the very act in question, the Puerto Rico Workmen's Accident Compensation Act, this Court said in *Bonet* v. *Texas Co.*, 308 U.S. 463, 471 (1940), citing the earlier decision of *Bonet* v. *Yabucoa Sugar Co.*, 306 U.S. 505, 510:

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[4] The exclusiveness of remedy provision alone was passed upon in *Nogueira* v. *New York, New Haven and Hartford Railroad Co.*, 281 U.S. 128, 137 (1930); *Crowell* v. *Benson*, 285 U.S. 22, 42 (1932); *Norton* v. *Warner Company*, 321 U.S. 565, 570 (1944); *Swanson* v. *Marra Brothers, Inc.*, 328 U.S. 1 (1946); *Seas Shipping Company* v. *Sieracki*, 328 U.S. 85, 102 (1946); *Ryan Stevedoring Co.* v. *Pan-Atlantic S.S. Corp.*, 350 U.S. 124, 125, 129, 140 (1956); *Reed* v. *S/S Yaka*, 373 U.S. 410, 414-415 (1963); *Jackson* v. *Lykes Brothers Steamship Co., Inc.*, 386 U.S. 731 (1967).

[5] Indeed, this Court has, in at least one context, agreed with the local interpretation of the Puerto Rico Act as to exclusiveness. See *Guzman* v. *Pichirilo*, 369 U.S. 698, 699 (footnote 1) (1962).

"Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island."

Pointing out that lip-service to this admonition was not enough, this Court went on to say (p. 471):

"To reverse a judgment of a Puerto Rican tribunal on such a local matter as the interpretation of an act of the local legislature, it would not be sufficient if we or the Circuit Court of Appeals merely disagreed with that interpretation. Nor would it be enough that the Puerto Rican tribunal choose what might seem, on appeal, to be the less reasonable of two possible interpretations."

This is so even if the local rule may be one, as was said in *DeCastro* v. *Board of Commissioners of San Juan,* 322 U.S. 451, 458-459 (1944), which is "out of harmony with our traditional system of law and statutory construction". (and further p. 455):

"Hence we have emphasized as a cardinal principle of review in such cases that the mere fact that our own system of law and statutory construction would call for the application of one rule to a given set of facts, does not preclude the adoption of a different one by the insular courts."

The rule of the *Bonet* and *DeCastro* cases was reaffirmed in *In Re Sawyer,* 360 U.S. 622, 640 (1959) when this Court said:

"Of course this Court and the Courts of Appeal must give the Territorial Courts freedom in developing principles of local law and in interpreting local legislation."

The unique situation of Puerto Rico has been recognized by this Court as recently as in the 1970 decade, specifically in *Fornaris* v. *Ridge Tool,* 400 U.S. 41 (1970); *Calero-Toledo* v. *Pearson Yacht Leasing Co.,* 416 U.S. 663 (1974) and *Examining Board* v. *Flores de Otero,* 426 U.S. 572 (1976). In these cases, the Supreme Court of the United States redefines what is the status, importance and binding forces of precedents of a judicial nature entered by the Supreme Court of Puerto Rico, all in light of the fact that now Puerto Rico is not the same territory as defined in the pre-1950-52 era. The fact that the applicability of federal law to the Commonwealth of Puerto Rico is not uniform and is not consistent with the continental United States is evident. The Supreme Court notices in *Fornaris* v. *Ridge Tool,* that the relations of the federal courts with Puerto Rico have often raised delicate problems. This means that the Supreme Court of the United States is aware of the fact that federal law does not apply in Puerto Rico as it would in a state; that there is no requirement for full constitutional uniformity in Puerto Rico; that in the absence of a constitutional mandate for uniformity in Puerto Rico, Congress could very well legislate over Puerto Rican matters insofar as to extend or not extend the admiralty provisions of the Constitution and that it is possible that local law may displace federal and/or congressional mandates which impose uniformity upon the different states. This Court has pointed out in those three cases what should be the rule to be followed by federal courts when dealing with Puerto Rico matters. This Court was specific in stating that on many occasions, when

federal courts reversed Puerto Rico courts, they did so following the natural inclination to construe Puerto Rico laws in an Anglo-Saxon tradition leaving little room to the interpretation that these laws should have been afforded taking into consideration Puerto Rico's Spanish background and difference in approach to regulating some of its internal problems as a matter of tradition. As a result, this Court handed down the rule that a Puerto Rico court should not be overruled on its construction of local law unless it could be said to be inescapably wrong.

In light of the above, the petitioners have failed to afford this Court reasons why the Supreme Court of the United States should depart from the precedents handed down by the Supreme Court of Puerto Rico, upon which the decision of the Court of Appeals is based.

IV. THE SUPREME COURT OF PUERTO RICO HAS CONSISTENTLY AND WITHOUT EXCEPTION DEEMED ITS WORKMEN'S ACCIDENT COMPENSATION ACT TO BE THE EXCLUSIVE REMEDY OF ALL EMPLOYEES (INCLUDING LOCAL SEAMEN) AGAINST THEIR EMPLOYERS WHO COMPLIED WITH THE ACT. IN TURN, THE SUPREME COURT OF PUERTO RICO HAS ELECTED TO MAKE APPLICABLE WITHIN THE COMMONWEALTH OF PUERTO RICO THE DOCTRINE OF "THE STATUTORY EMPLOYER" INSOFAR AS THE ABOVE-MENTIONED EMPLOYEES AND EMPLOYERS IS CONCERNED.

In *Musick* v. *Puerto Rico Telephone Co.*, 357 F.2d 603 (1st Cir. 1966) the Court of Appeals made an interpretation of the concept of statutory employer contained in the Puerto Rico Workmen's Accident Compensation Act and held that said statutory employer was immune from lawsuit by the employees of his subcontractors.

On the basis of the *Musick* doctrine, the United States District Court for the District of Puerto Rico held in

Lopez Correa v. *Marine Navigation Co.*, 218 F.Supp. 993 (1968) that where the owner of a vessel subcontracted the loading and unloading operations to a stevedoring contractor who employed a longshoreman who was injured during such operations while the vessel was afloat on navigable waters within the territory limits of Puerto Rico, and the stevedoring contractor had insured its employee under the Workmen's Accident Compensation Act and the longshoreman had been awarded compensation under the Act, the shipowner was the longshoreman's statutory employer under the Act and the longshoreman was barred from suing the owner.

The statutory employer doctrine in *Lopez Correa* and *Musick* was reversed by the Court of Appeals in *Colon Nunez* v. *Horn Linie*, 423 F.2d 952 (1970). In reaching that result the Court of Appeals cited *Gonzalez* v. *Cerveceria Corona, Inc.*, an opinion of the Supreme Court of Puerto Rico of January 29, 1969, which said Court believed was inconsistent with *Musick*.

The Court of Appeals stated in *Colon Nunez* (p. 954):

> "When we decided *Musick* we recognized that the precise question was one of first impression. No decision of the Supreme Court of Puerto Rico then provided guidance. Nor were we aware of the possible relevance of *Guerrido* perhaps because *Musick* contained no smell of the sea. We therefore addressed ourselves directly to the language of 11 L.P.R.A. § 21, which grants exemption from civil liability "when an employer insures his workmen or employees". We decided that the principal contractor was an "employer" within the meaning of this section because the statute sometimes imposed on him an employer's liability for compensation. He "insured" his subcontractor's employees, we thought, because he bore the

additional expense of hiring insured subcontractors. However, after a careful reconsideration prompted by a recognition of the relevance of *Guerrido* and by the subsequent decision of the Supreme Court in *Gonzalez* v. *Cerveceria Corona, Inc.*, we have decided that our earlier views were not required by the statute."

It is evident that in reversing *Musick*, the Court of Appeals felt that it was bound by the ruling of the Supreme Court of Puerto Rico in *Gonzalez* v. *Cerveceria Corona, Inc., supra.*

The Supreme Court of Puerto Rico has now definitely, clearly and squarely interpreted the Act on the question of statutory employer, in *Lugo Sanchez* v. *Puerto Rico Water Resources Authority*, decided on March 31, 1977, P.R. Bar Assoc. Ref. No. 1977-33, — D.P.R. — (1977); *Lydia Orza Rentas Vda. de Costas* v. *Puerto Rico Olefins, et al.*, decided on October 20, 1978, P.R. Bar Assoc. Ref. No. 1978-75, — D.P.R. — (1978), and *Miguel Rodriguez Cruz* v. *Union Carbide Grafito, Inc.*, decided on November 14, 1978, P.R. Bar Assoc. Ref. No. 1978-86, — D.P.R. — (1978).

In *Lugo Sanchez*, Puerto Rico Water Resources Authority contracted with Zachry International the construction of several thermoelectric plants which after being finished and delivered, continued receiving maintenance by Zachry. There was need to repair a valve in a steam pipe by Zachry, who notified the authority to eliminate all vapor from the line. Relying on representation of an Authority's engineer that the line was vapor free, Zachry's employee started removing a valve and a gush of steam escaped, injuring him. Zachry had insured its employees with the State Insurance Fund and the injured worker was compensated under the policy. Subsequently, he sued the Authority, based on the Authority's negligence in maintaining steam in the pipes and the false information of the

Authority's engineer which made the worker believe that there was no steam risk. The worker's complaint against Water Resources was based on Section 31 of the Workmen's Accident Compensation Act which provides that where the injury has been caused under circumstances making a third party responsible for such injury, an action may be brought against that third party.

The Superior Court awarded damages to the plaintiff holding that the Puerto Rico Water Resources Authority was a "third party". In reversing, the Supreme Court of Puerto Rico states:

"Inasmuch as the appellee Puerto Rico Water Resources Authority has by law the condition of 'statutory employer' it cannot be considered a third party even by the narrow definition of said term adopted in *Lopez Rodriguez* v. *Delama* (1974) 102 D.P.R. 254, 258, as including 'all persons other than the injured worker and his insured employer.'

"The third party subject to an action for damages for the purposes of Sec. 31 of the Act is a stranger, foreign and separate from the juridical interaction which connects the statutory employer (AFF) and the contractor (Zachry) with the State Insurance Fund in the common legal obligation of insuring its workers and employees under the provisions of the Workmen's Compensation Act. Under no premise can the employer to whom the Act has expressly dispensed of the obligation of insuring and who is a party regulated by the scheme of the compulsory exclusive insurance be considered a third party or a stranger causer of damage.

"There is no liability on the part of the principal contractor if the sub-contractor has secured or insured

compensation to his employees, as the purpose of the Act is to prevent subcontracting work to irresponsible sub-contractors and thus deprive injured workmen of the benefits of the compensation act. The purpose of the statute has been fulfilled if the sub-contractor carries insurance. To hold the principal liable for compensation, even though the sub-contractor carries insurance, would mean giving the employees of the sub-contractor a greater right than the employees of the principal, for they would have a right against their immediate employer, the sub-contractor, as well as the principal, which would not be in accordance with the intent of most of the legislatures.' *Schneider, Workmen's Compensation* Vol. 2, Sec. 326, p. 177, 1942 Edition.

"The act does not present the complications originated by this appeal. All that the act proposes is that the worker be protected by an insurance whose premiums will be paid by the Statutory employer or the contractor as the case may be. But the law does not require *two* insurances instead of one. Neither can there be *two* parties responsible under the legislative design, if one is exempted from the insurance."

In a footnote and refusing to follow *Colon Nunez,* the Supreme Court strongly criticizes that decision by stating:

"*Colon Nunez,* supra, nevertheless, is not a precedent to follow, for it is contrary to the constant doctrine maintained in the jurisprudence and treatises. Larson condemns in strong language this decision because it follows a minority criteria and goes beyond the predominant tendency in the jurisprudence. He asks 'What are we to make of this morsel of xenophobia?' Larson, *Workmen's Compensation,* Vol. 2A, Sec. 72:31

DP. 1541, 1976 Edition. In sound function of reasoning no one follows wrong precedents."

By adopting the *Lugo Sanchez* statutory employer doctrine in its judgment of dismissal, the United States District Court for the District of Puerto Rico has in effect closed the circle, returning to *Musick* and *Lopez Correa.*

After the United States District Court for the District of Puerto Rico entered the judgment of dismissal, the Supreme Court of Puerto Rico decided *Lydia Orza Rentas Vda. de Costas, supra,* and *Miguel Rodriguez Cruz, supra,* further ratifying and explaining the statutory employer *Lugo Sanchez* doctrine. In the *Lydia Orza Rentas* case the employees of a maintenance contractor died as a result of an accident that occurred during maintenance work in the P. R. Olefins Plant. Their dependents filed suit against P. R. Olefins, owner of the plant who had retained the services of the maintenance contractor. The Supreme Court of Puerto Rico confirmed a judgment dismissing the complaint against P. R. Olefins on the basis that it was the statutory employer of the deceased workers. In doing so, the Court further defined the term "statutory employer":

"This term now means owners of works and principals to whom the law imposes the obligation of insuring the employees of the contractors or subcontractors that they had retained for the performance of the works and services, when the latter do not have them insured. The purpose of this obligation is that said employees be insured, irrespective of whether the insurance is paid by the contractor or subcontractor, or in the alternative, by the owner of the works or the principal. The payment of that insurance by the contractor, the subcontractor, the principal, or the owner of the works, vests immunity upon all the em-

ployers against damage claims by the employees or by the Fund. *Lugo Sanchez* v. *Water Resources Authority*, supra, and *Colon Santiago* v. *Industrial Commission*, 97 D.P.R. 208 (1969)."

The Court also rejected the contentions of plaintiffs that P. R. Olefins had waived its statutory employer immunity by a contractual obligation to provide safe working conditions, explaining that the statutory employer immunity was not waived by a breach of either a contractual or statutory obligation (under the Puerto Rico Occupational Safety and Health Act, 29 L.P.R.A. 361 to 361bb, specifically section 361-e) to provide safe working conditions:

> "The breach of that legal obligation does not authorize any cause of action in favor of the employees, even when they suffered injuries and neither does it affect the immunity that the employer has under article 20 of the Puerto Rico Workmen's Compensation Act, 11 L.P.R.A. 21. If it was decided that an employer that is contractually bound to maintain safe working conditions is obligated to indemnify injured employees, the same remedy would exist when the obligation was created by statute. The effect of this would be to completely annul the employer immunity that is granted by said article 20 of the law."

The foregoing does away with petitioners' argument that they are entitled to an independent claim because of the obligation of the shipowner to furnish a safe and seaworthy vessel.

In the *Miguel Rodriguez Cruz* case, *supra*, the Supreme Court of Puerto Rico ratified the statutory employer doctrine indicating that immunity was not limited only in favor of those statutory employers that had paid premiums

to the State Insurance Fund covering the employees of their direct employer and neither was it limited to the situation where the direct employer was performing work in line with the usual activity of the statutory employer.

There is nothing novel about the statutory employer doctrine. As Larson points out in his Workmen's Compensation Law, Vol. 2, § 72.31, p. 175, 41 states have "statutory employers" or "contractual-under" statutes insulating the general or principal contractor from third party suits. See, for example, *Evans* v. *Newport News Shipbuilding & Dry Dock Company*, 361 F.2d 364 (4th Cir. 1966) and *Theriot* v. *Gulf Oil Corporation*, 427 F.Supp. 50 (E.D. La. 1976).

The Supreme Court of Puerto Rico has consistently and without exception deemed its Workmen's Accident Compensation Act to be the exclusive remedy of all employees (including local seamen) against their employers who comply with the Act. In support of the foregoing, see *United Porto Rican Sugar Co.* v. *District Court*, 44 P.R.R. 904, 906-907 (1933) (local seaman) and *Onna* v. *The Texas Co.*, 64 P.R.R. 497, 502 (1945). In *DeJesus* v. *Osorio, et al.*, 65 P.R.R. 601 (1946), the Court not only adhered to the exclusive provisions of the Puerto Rico Compensation Act, but went on to define the purposes of the act, and construe it as drawn (p. 604):

> "We cannot agree with the appellant. The purposes sought by workmen's compensation acts, such as ours, comprise not only the enlargement of the rights of the workman, but also the limitation of the employer's liability. While on the one hand the employer, or his insurer, is compelled to pay compensation without reference to any fault or negligence on his part, and the defense of a contributory negligence or negligence of a fellow servant and other defenses are eliminated,

> on the other hand, the amount of the compensation is limited and in case of death, compensation is allowed only to those who were dependent for support on the workman. It is therefore perfectly consistent with those purposes to eliminate, as our statute expressly did, all remedies against the employer based on a labor accident, except those expressly provided by the statute. If the result is, as in the case at bar, that certain persons are deprived of the right to compensation in the case of death, which they had before the approval of the act, we can not say that that result was not within the intention of the lawmaker, particularly in view of the fact that persons not dependent on the deceased workman are the only ones deprived of such right."

The Supreme Court of Puerto Rico decided *Inter Island Shipping Corporation* v. *Industrial Commission of Puerto Rico*, 89 P.R.R. 635 (1963) and in comprehensive opinion, traced the history and legislative background of the local compensation act, reviewed the *Lastra, Guerrido, Fonseca* and *Waterman* v. *Rodriguez* decisions, and found that the Puerto Rico Workmen's Compensation Act made the general maritime law of the United States "locally inapplicable" and under the circumstances was therefore the exclusive remedy of the injured seaman.

Subsequent decisions of the Supreme Court of Puerto Rico underscore its philosophy of approving the existing unified system of compulsory compensation administered under the aegis of the government for the benefit of the employee and the complete exclusion of any other redress against his employer who complies with the Act. This was expressed in *Cortijo Walker* v. *Water Resources*, 91 P.R.R. 557 (1964); *Marcano Torres* v. *Water Resources*, 91 P.R.R. 635 (1965); *Vda. de Andino* v. *Water Resources*, 93 P.R.R. 168 (1966); *Rosario Crespo* v. *Water Resources*, 94 P.R.R.

834, 850 (1967); *Velez* v. *Halco Sales Inc.*, 97 P.R.R. 426 (1969). For example, the Court said in *Cortijo Walker* that originally there were exceptions to the exclusiveness of remedy provisions when the injuries were caused by an illegal act or criminal negligence. These were eliminated in 1935, so that presently the only exception is the uninsured employer, and, as the Court, the same panel that decided the *Inter Island* case, *supra*, one year before, said "This is the only case".

While agreeing (p. 48) that it was "manifestly undesirable" that a local statute be first construed in a Federal Court, the Circuit Court of Appeals in *Camunas* v. *New York and Porto Rico Steamship Co.*, 260 F. 40, 55 (1919) nevertheless went on to construe the original compensation act and find that there was not even "reasonable doubt that the Puerto Rico Legislature intended to impose, upon employers and employees alike, the compensation theory in substitution for the negligence theory".

It is evident that Puerto Rico policy favors the certainty of workmen's compensation over the hazards of damage actions as the most salutary way of benefiting the workmen injured in the course of their employment and, as the Court observed in *Norton* v. *Warner Company*, 321 U.S. 565, 571 (1944) "Whether the (damage actions) are more desirable than system of compensation is not for us to determine".

The United States Court of Appeals for the First Circuit has elected to follow the Supreme Court of Puerto Rico in the decision which is the object of the petition for certiorari. In light of the contents of this opposition, it is evident that the Court of Appeals has acted correctly as a matter of law following sound judicial precedents. The petitioners have failed to show as a matter of law reasons why this interpretation should be the object of discretionary review by certiorari.

V. There Is No Invidious Discrimination Against Puerto Rico Maritime Workers.

There is really no discrimination by the Puerto Rico government if as a matter of local concern it decides to treat all workers, including maritime workers, on an equal basis. In fact, if Puerto Rico devises a local workmen's compensation scheme giving benefits to its maritime workers similar to those given by the Federal Government, the other workers, left behind, could complain of discrimination.

The petitioners have not shown any compelling interest or property rights in their wish to participate in the compensation scheme of the Longshoremen and Harbor Workers' Compensation Act. Even within the stateside federal context, segregation of benefits is appropriate when it has a reasonable purpose and embodies a reasonable means of achievement. *Hughes* v. *Alexandria Scrap Corp.*, 426 U.S. 794 (1976); *McCullough* v. *Redevelopment Authority of City of Wilkes-Barre*, 522 F.2d 858 (C.A. Pa. 1975); *Sams* v. *Ohio Val. General Hospital Ass'n.*, 413 F.2d 826 (C.A. W.Va. 1969). This is specially true for Workmen's Compensation programs where traditionally great latitude is given and instances of discrimination more prejudicial than the contents of petitioners' complaints have not been found invidious. *Richardson* v. *Belcher*, 404 U.S. 78 (1971). (Congress could rationally conclude that needs served by workmen's compensation laws should continue to be met primarily by states, and their federal program that began to duplicate efforts of states might lead to gradual weakening or atrophy of state programs); *Lester* v. *Terry County, Texas*, 491 F.2d 975 (C.A. Tex. 1974); *Massey* v. *Thiokol Chemical Corp.*, 368 F.Supp. 668 (D.C. Ga. 1973); *Doe* v. *Hodgson*, 344 F.Supp. 964 (D.C. N.Y. 1972) *affirmed* 478 F.2d 537, *cert. denied*, 94 S.Ct. 732, 414 U.S. 1096; 38 L.Ed. 2d 55.

Even though they do not say so openly, petitioners are attacking the constitutionality of Sections 747, 749 and 821 of the Puerto Rico Federal Relations Act, 48 U.S.C. 747, 749 and 821, and section 19 of article 2 of the Puerto Rico Constitution because they allow Puerto Rico to apply its Puerto Rico Workers' Accident Compensation Act to its maritime workers and the states are not allowed to do this. What petitioners overlook is that almost from the very outset there has been a lack of application to Puerto Rico of the U.S. Constitutional provisions otherwise uniform in the United States. See *Downes* v. *Bidwell*, 182 U.S. 244, 277, 287, where this Court held in 1901 that Article 1, Section 8 of the Constitution requiring duties to be uniform "throughout the United States" did not pertain to Puerto Rico.

See also *Dorr* v. *United States*, 195 U.S. 138, 149 (1904), where it was held ". . . that the Constitution does not, without legislation and of its own force, carry such right (trial by jury) to territory (Philippine Islands) * * *", (emphasis added) not made a part of or incorporated in the United States. In the same line of thought are *Balzac* v. *People of Puerto Rico*, 258 U.S. 298, 304 (1922) and *Torres* v. *Commonwealth of Puerto Rico*, — U.S. —, 99 S.Ct. 2425 (1979), discussed under Roman numeral I in this opposition.

Recently, the Court of Appeals for the First Circuit has stated:

> "Under prevailing interpretations of Congressional enactments, the general maritime law governs actions in Puerto Rico *to the extent consistent with local law.*" (Emphasis supplied) *Carrillo* v. *Sameit Westbulk*, 514 F.2d 1313, 1316 (1st Cir. 1975).

We repeat: With the issue of uniformity specifically posed by the Court of Appeals, petitions for writ of certio-

rari were filed in *Fonseca, supra,* and in *Alcoa* v. *Perez Rodriguez,* 376 F.2d 35 (1st Cir. 1967), *cert. denied,* 389 U.S. 905 (1967), urging the same arguments as to uniformity, Fifth and Fourteenth Amendments, and conflicts with the Supreme Court's decisions, (Petition No. 709 October Term 1960 and Petition No. 317 October Term 1967), and the Supreme Court declined to intervene, 365 U.S. 860 (1960) in *Fonseca* and 389 U.S. 905 in *Perez Rodriguez.*

There is nothing new in petitioners' petition on the issue of constitutionality.

Conclusion

For the foregoing reasons, it is respectfully submitted that the Petition for Certiorari to the United States Court of Appeals for the First Circuit should be denied.

Respectfully submitted,

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